

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

BRIAN HUDDLESTON,

Plaintiff,

vs.

**FEDERAL BUREAU OF
INVESTIGATION and UNITED
STATES DEPARTMENT OF
JUSTICE**

Defendant

Case No. 4:20-cv-447-ALM

**PLAINTIFF'S STATUS REPORT and SURREPLY IN OPPOSITION TO
DEFENDANTS' MOTION TO STAY**

NOW COMES Brian Huddleston, the Plaintiff, providing a status report and a surreply in opposition to the Defendants' Second Motion to Stay (Doc. No. 21):

On February 1, 2021, the Court ordered the Defendants to produce responsive documents not later than April 23, 2021. *See* February 1, 2021 Memorandum Opinion & Order. As of April 23, 2021, however, the Defendants had only partially complied with the Court's February 1, 2021 Order. The Plaintiff has attached as Exhibit 1 the documents and cover letter that were sent on April 23, 2021. Out of more than 500 pages reviewed, all but 68 pages were withheld, and those pages were heavily redacted. By the FBI's own admission, more than 1,000 pages have not yet been produced in any form (and the

Plaintiff has good reason to believe that the number is much higher). In other words, the FBI is in violation of the Court's February 1, 2021 Order.

The Defendants' April 20, 2021 reply (Doc. No. 23) illustrates the fact that the Second Motion to Stay (Doc. No. 21) offered nothing new, but instead was merely a motion for reconsideration of the earlier motion to stay (Doc. No. 10) that the Court previously denied. The belated declaration of Michael G. Seidel, offered as an attachment to the April 20, 2021 reply (rather than the original or even the second motion), likewise adds nothing new, and "[a]rguments raised for the first time in a reply brief are waived." *Houser v. LTD Fin. Services LP*, 4:19-CV-01552, 2021 WL 68178, at *4 (S.D. Tex. Jan. 7, 2021). Mr. Seidel essentially argues, "never mind the court order, 500 pages per month is our normal way of doing things, and that's exactly what we intend to do here." As usual, the FBI considers itself above the law and just does whatever it wants.¹

In its April 20, 2021 reply, the FBI faults the Plaintiff because he "fails to note the numerous other federal cases cited in Defendants' Second Motion to Stay, which, taken collectively, acknowledge the broad acceptance within the federal court system of the FBI's processing rationale." April 20, 2021 Reply (Doc. No. 23) 3. Those cases miss the point. The Plaintiff is not aware of any case wherein a court ordered the FBI to produce documents by a date certain, and the FBI simply thumbed its nose at the order and said

¹ The Plaintiff should be sure to note that his criticisms are in no way directed to Asst. U.S. Attorney Andrea Parker, who has been completely courteous and professional at all times. The Plaintiff's grievance is not with Ms. Parker, but her clients.

“that’s not how we do things around here.” As the Plaintiff has noted previously, the FBI already has been caught acting in bad faith, *e.g.*, denying possession of records that it clearly had. *See, e.g.*, December 30, 2020 Plaintiff’s Response in Opposition to Motion to Stay (Doc. No. 11). Furthermore, this is not a run-of-the mill FOIA request. The Plaintiff’s request and this case are matters of national concern, as illustrated by the media coverage just over the weekend. *See, e.g.*, Zachary Stieber, “FBI Releases Documents on Probe Into Death of DNC Staffer Seth Rich,” April 24, 2021 The Epoch Times (https://www.theepochtimes.com/fbi-releases-documents-on-investigation-into-death-of-democrat-national-committee-worker-seth-rich_3789686.html); “Lawyer: FBI’s Seth Rich Docs Show Robbery Narrative 'Falling Apart',” April 26, 2021 *Newsmax* (<https://www.newsmax.com/us/sethrich-investigation-death-fbi/2021/04/25/id/1018922/>); Daniel Payne, “FBI memo: DNC staffer Seth Rich was 'very drunk' when shot, unable to help police before dying,” April 24, 2021 Just the News (<https://justthenews.com/nation/crime/declassified-fbi-doc-slain-democratic-staffer-seth-rich-very-drunk-when>).

In his April 13, 2021 response in opposition (Doc. No. 22) to the latest motion for stay, the Plaintiff indicated that he would not object to giving the Defendants an additional two weeks to comply with the Court’s order. The Plaintiff stands by that, and he is not yet asking this Court for sanctions, much less a contempt citation. Nonetheless, the Plaintiff is concerned that the FBI seems so casual about the Court’s order.

Respectfully submitted,

/s/ Ty Clevenger

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Certificate of Service

On April 26, 2021, I filed a copy of this response with the Court's ECF system, which should result in automatic notification via email to Asst. U.S. Attorney Andrea Parker, Counsel for the Defendants, at andrea.parker@usdoj.gov.

/s/ Ty Clevenger

Ty Clevenger